Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 11. NOVEMBER, 1904. No. 6.

CASE AND COMMENT

Monthly. Subscription, 50 cents per annum post-paid. Single numbers, 5 cents.

THE LAWYERS' CO-OPERATIVE PUB. CO.,
Rochester, N. Y.

NEW YORK, 81 Nassau St. CHICAGO, 225 Dearborn St.

Entered at post office at Rochester, N. Y. as second-class mail matter.

Justice to Labor Unions.

Sane and true words were uttered in the report of the standing committee of the Episcopal House of Bishops on the relations of capital and labor, as published in the public press. Bishop Potter, of New York, was chairman of the committee. On this point the report says:

"The laborer has learned from the capitalist to despise order and break law. He has learned from the churchman to pursue the dissenter with menace and violence. The recent tragedies in Colorado do not follow at a far distance the massacres which in the sixteenth century ensued upon the withdrawal of Holland from the ecclesiastical union.

"While, then, we condemn the tyranny and turbulence of the labor union, and call upon law to preserve the liberty of every citizen to employ whom he will and to work for whom he will, we deprecate the hasty temper, which, in condemning the errors of unions, condemns at the same time the whole movement with which they are connected. The offenses of the union are as distinct from the cause for which the organization of labor stands as the inquisition is distinct from the Gospel.

"In the face of a prejudice and a hostility for which there are secured reasons, we are convinced that the organization of labor is essential to the well-being of the working people. Its purpose is to maintain such a standard of wages, hours, and conditions as shall afford every man an opportunity to grow in mind and in heart. Without organization, the standard cannot be maintained in the midst of our present commercial conditions."

If there were no unreason on the side of capital, laborers would much more quickly come to discriminate between what is right and what is wrong in their labor movements. It is because both sides exhibit so much of passion, unreason, and disregard of law that the general public needs to see the matter clearly, judge of it fairly, and relentlessly pursue all lawbreakers on either side. The sufferance of such lawlessness by the public has become a great reproach. There are some signs of an awakening of the public to a determination that all lawlessness, whether by violence or corruption, shall be sternly punished.

"Ethics of Loot."

Under this heading the New York Tribune publishes an elaborate discussion of the obligation of a prominent citizen to restore to a foreign cathedral a cope which disappeared two or three years ago from its

sacristy and which is "acquired by him in a perfectly legitimate way, by purchase from art dealers and professional collectors, and is now on exhibition, with other of his treasures, at the South Kensington museum in London." The Tribune says that, especially in Great Britain, there is a pronounced feeling, even among Roman Catholics, against any such act of restitution, "since the cope is of English workmanship, a superb specimen of the Opus Anglicum embroidery, so famous in mediæval art history, and, it is argued, as such it would be more just that the vestment should remain in England than be returned to Italy." It is shown that the cope was presented by a pope, more than seven hundred years ago, to the cathedral, where it has ever since been preserved; but it is said there is nothing but speculation to show how it was allowed to leave Great Britain, or how it came into the hands of the pope.

There are two arguments involved here, which are somewhat remarkable. One of them goes on the contention that it would be very inconvenient for people who have stolen art treasures to be obliged to restore them to the rightful owners. For instance, it is said, the British museum would be obliged to restore the Elgin marbles to the Greek government and the Louvre at Paris to return some of its great art treasures to Spain. The coolness with which this argument is put up is refreshing. In the first place, it assumes that a plain, ordinary case of stealing an article from a cathedral and carrying it to another country is identical in principle with the carrying off of treasures by the victorious nation from a conquered nation in time of war. It is unnecessary here to talk about the ethics of the transaction when a victorious nation carries off treasures from one that it has conquered in war. That involves a question of international law regarding rights of property in time of war. No such question arises in the case of a petty theft by a sneak thief in time of peace. Any contention that the legal title to such property passes by virtue of the theft is too preposterous for consideration. The rights of the purchaser, who, "by perfectly legitimate means," acquires stolen property, have no existence as against the demand of the true owner from whom it was stolen. The ethics of the question present no problem to a person who has brains enough to understand the question and conscience enough to care about its ethics. The denial of the title of the claimant is, of course, perfectly legitimate as an attempted defense in a legal action; but, if the owner can show an unbroken ownership of the property for more than seven hundred years, the efficacy of such an attempted defense may at least be doubted. After centuries of possession of personal property, its ownership would seem fairly well established in favor of the person from whom it is stolen as against a purchaser from the thief. As against a thief, or one who stands in the shoes of the thief, the possession of the party from whom it was stolen is sufficient title on which to maintain an action of replevin. A purchaser from a thief, though he buys in good faith, stands in the thief's shoes so far as his legal right to the property is concerned. The claim that he can find and set up as a defense a flaw in the plaintiff's title more than seven hundred years before the theft is in law ridiculous and in ethics beneath contempt.

"Church Usurpation of Functions of State."

"The Episcopal Church is in danger of drifting into usurpation of the functions of the state, and . . . the members of the Episcopal Church are drifting into tame submission to such usurpation." This is the suggestion gravely made by an editorial in a leading newspaper in commenting on the recent action of the general convention of the Episcopal Church on the subject of divorce. If such an editorial utterance is to be treated seriously,—and, of course, it purports to be seriously made,—the relations of church and state must be intelligently considered. The constitutional separation of church and state in this country, though it is occasionally attacked openly by extremists who are little heeded, and more frequently attacked insidiously by advocates of particular measures which are barred by the enforcement of the Constitution, is, nevertheless, accepted with unreserved approval by the great majority of the American people. The attacks upon it are usually made by those who wish to extend the authority of some church, or to get for it

some advantages. It is somewhat new to attack this constitutional separation from the other side by attempting to compel the churches to accept state interference. Such an attempt, though it may be hardly worth considering, is involved in this newspaper editorial. If the state can compel a church which regards marriage as a sacrament of the church to recognize a marriage or a divorce contrary to church law, what becomes of the constitutional guaranty of freedom of religious profession and worship? Put baldly, the power of the legislature to regulate the sacraments of a church is too preposterous for consideration; but that is exactly what is involved if a church which regards marriage as a sacrament is compelled, in the administration of its religious functions, to recognize a marriage which is contrary to church law. When a church refuses to recognize the validity of a divorce which is valid in law its refusal can affect nothing but the religious rights and relations of the person affected. The refusal has nothing to do with the standing of such a person before the law. The church has nothing to do with that. On the other hand, it is absurd to contend that the state can compel the church to admit a person to its sacraments or its membership when he is excluded therefrom by church law. That is all that is involved in the refusal of a church to recognize a marriage or divorce. The matter is so simple and so clear that an apology might be offered for giving space to its discussion if it had not been taken up for grave consideration by the public press.

The Modification of the Fellow-Servant Doctrine.

In some recent press articles, as well as interviews with railroad officials, the idea has been conveyed that the great mass of railroad accidents are due, not to the negligence of the executive officers of the railroads, but to the failure of the employees to obey orders and rules promulgated by their superiors. The president of one of the great railroads, in responding to an inquiry addressed to railway officers by the New York Journal of Commerce, says: "I beg to say that a careful examination of the railway accidents will show beyond question that three fourths or seven eighths of them are due to a disregard of well-established rules which experience has shown would prevent accidents. The enormous growth of railway mileage has greatly increased the number of employees. The difficulty of enforcing discipline, and the careless familiarity with which men take, not only their own lives, but the lives of trainloads of passengers into danger, will not be prevented until those who are responsible through criminal neglect are punishable criminally." These articles and interviews do not attempt to explain why this difference exists between the care exercised by the subordinate employees and that exercised by their superiors. Is there any reason why railroad companies should employ so many careless and negligent employees to execute orders and take charge of important instrumentalities, while they employ very careful men to give orders and promulgate rules. Is the difference between the degree of care exercised by the superior and subordinate employees affected by the fact that railroad companies are relieved from liability for the negligence of the subordinate employees in the great majority of cases because the person injured is usually a fellow servant?

Is it a suggestive circumstance that the ability of railroad companies to select safe men seems to cease at the point where the law relieves them to a large extent from liability for them?

The theory that the fellow-servant doctrine is responsible for this condition of affairs is also strengthened by the fact that, as shown by the Interstate Commerce Commission's report for 1903, the number of passengers killed during the year ending June 30th was 321, while 3,233 railway employees were killed; so that over 90 per cent of the casualties were of the kind in which the law relieves the employers from liability even in case of negligence, unless the negligence is that of a superior servant.

The probability that the abrogation, or at least modification, of the fellow-servant doctrine would cause the companies to exercise the same care in selecting the men who are to take charge of such instrumentalities as trains, locomotives, switches, and signal points as they now exercise in selecting their vice principals raises the query as to

whether the fellow-servant doctrine is so founded in justice and principle that it ought not to be modified, even though its modification would result in the saving of human life and limb. At the time of the adoption of this doctrine, railroads were in their infancy, and were from 12 to 50 miles in length. The locomotive weighed about 3 tons instead of 100 tons as at present. The speed of the train was about 12 miles per hour. The schedule of trains was simple. The employees were generally personally acquainted with each other.

In the early decisions formulating the doctrine, the courts did not base their conclusions upon the ground of justice or principle; in fact, the doctrine is an exception to the time-honored rule of *respondeat superior*. These early decisions were based solely on the ground of expediency. This plainly appears from the language used by Chief Justice Shaw in his famous opinion in Farwell *v.* Boston & W. R. Corp. 4 Met. 49, 38 Am. Dec. 339: "Where several persons are employed in the conduct of one common enterprise or undertaking, and the safety of each depends much on the care and skill with which each other shall perform his appropriate duty, each is an observer of the conduct of the others, and can give notice of any misconduct, incapacity, or neglect of duty, and leave the service, if the common employer will not take such precautions, and employ such agents, as the safety of the whole party may require. By these means, the safety of each will be much more effectually secured than could be done by a resort to the common employer for indemnity in case of loss by the negligence of each other." These early conditions have now changed. In their place we have now our complicated railroad system, with its hundreds of thousands of employees, who are not only strangers to each other, living in many cases hundreds of miles apart, but who have no opportunity for acquiring knowledge as to each other's capacity. In fact, the operation of these gigantic systems would be practically impossible if each employee should set himself up as a judge of the qualifications of his fellow employees.

Can it be said, in view of these changed conditions, accompanied, as they are, by the violent death of more than 3,000 railroad employees annually, that in the continuance of this doctrine the "safety of each will be more effectually secured than could be done by a resort to the common employer for indemnity?" This was the reason on which Chief Justice Shaw based his decision, and, if the question propounded is answered in the negative, the reason for continuing this exception to the rule of *respondeat superior* fails.

Index to New Notes
IN
LAWYERS' REPORTS, ANNOTATED.

Book 65, Parts 1 and 2.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Accession and Confusion.

An assignee of a gas lease, which, to avoid accounting to its assignor for his share of the profits of a well to which he is entitled under the contract of assignment, fraudulently commingles the product of the well with the product of other wells without keeping any account or preserving any record of the amount of gas produced by it, is held, in Stone *v.* Marshall Oil Co. (Pa.) 65 L. R. A. 218, to be obliged to account for the proportionate part called for by the contract of the whole amount of gas produced and sold by it, under the principle which is applied in case of the fraudulent confusion of goods.

Action.

An agreement by a resident of one county, in response to a telephone call from a person residing in another county, that he would honor a draft for the amount in case the latter should advance money to a third person, is held, in Bank of Yolo *v.* Sperry Flour Co. (Cal.) 65 L. R. A. 90, to be made in the former, within the meaning of a constitutional provision that actions on contracts may be brought in the county where they are made.

Attachment.

See FIXTURES.

Attorneys.

An attorney is held, in Dorr *v.* Camden (W. Va.) 65 L. R. A. 348, to have no right to withhold from his client information acquired by him in the exercise of such attorneyship, and use the same to extort an increased compensation from his client, or coerce him into a contract he would not have entered into upon full information.

Bankruptcy.

The obligation of a married woman, not a free trader, to pay for goods which form part of a stock in trade with which she is carrying on business, which may, in equity,

be enforced against her separate estate, is held in MacDonald *v.* Tefft-Weller Co. (C. C. App. 5th C.) 65 L. R. A. 106, to be a "debt," within the meaning of the clause of the bankruptcy act relating to involuntary bankruptcy proceedings.

Benevolent Societies.

A member who has been wrongfully expelled from an unincorporated benefit society is held in Lahiff *v.* St. Joseph's T. A. & B. Soc. (Conn.) 65 L. R. A. 92, to be entitled to abandon all claims to reinstatement, and resort to an action for damages for the injury inflicted upon him by the expulsion.

Bicycles.

A statute making a municipal corporation liable for injuries caused by failure to keep its streets safe for travelers "with their teams, carts, and carriages" is held, in Fox *v.* Clarke (R. I.) 65 L. R. A. 234, not to apply in favor of one using a bicycle, when such means of conveyance subsequently comes into use.

Carriers.

See also INJUNCTION.

The owner of a steamship is held, in Weisshaar *v.* Kimball Steamship Co. (C. C. App. 9th C.) 65 L. R. A. 84, to be liable for the death of a passenger drowned by the swamping of a boat sent to convey him from the shore to the vessel, where the officer in charge of the boat permits it to attempt the journey in an overloaded condition, although the passengers are themselves guilty of contributory negligence in failing to leave the boat when told that it is overloaded, and requested to do so.

Charities.

A legacy to a particular church of which testator is a member is held, in Gladding *v.* St. Matthew's Church (R. I.) 65 L. R. A. 225, to lapse with the termination of the church's existence, and not to be capable of administration *cy près*, although the church was for the benefit of deaf mutes, and the work in their behalf is carried on by the corporation into which the legatee was consolidated, where there is nothing to indicate that the continuation of the work, rather than the church itself, was the object of the testator's bounty.

Conflict of Laws.

A statute legitimating all children of slaves which have been recognized by the man as his, although the father and mother have ceased to cohabit prior to the passage of the act, is held, in Irving *v.* Ford (Mass.) 65 L. R. A. 177, not to be binding on a man who has become domiciled in another state.

Constitutional Law.

The right of the state to forbid independent contractors, performing work for it to require their employees to labor more than a specified number of hours per day, either under its police power, or on the ground that the legislature may prescribe rules for the manner in which state work shall be performed, is denied in People *v.* Orange County Road Construction Co. (N. Y.) 65 L. R. A. 33.

An act providing an eight-hour day for all workingmen in mines, smelters, and mills for the reduction of ores is sustained in *Re* Boyce (Nev.) 65 L. R. A. 47.

The right of the legislature to provide for the destruction of intoxicating liquors kept for illegal sale, without granting their owner a jury trial, is sustained in Kirkland *v.* State (Ark.) 65 L. R. A. 76.

The power of the court to assess the damages, in case of default, without the aid of a jury, is held, in Dyson *v.* Rhode Island Co. (R. I.) 65 L. R. A. 236, not to be destroyed by a constitutional provision preserving the right of trial by jury inviolate, where, at the time of the adoption of the Constitution, the court followed the common-law practice of assessing damages in such cases without calling a jury.

A statute attempting to make street car companies responsible for the payment of

a privilege tax imposed upon persons leasing the right to use the cars for advertising purposes, is held, in Knoxville Traction Co. v. McMillan (Tenn.) 65 L. R. A. 296, to be void under a constitutional provision that no one shall be deprived of his property without due process of law.

A statute prohibiting solvent merchants, under penalty, from disposing of their stocks in bulk without giving notice to their creditors is held, in Block v. Schwartz (Utah) 65 L. R. A. 308, to be an unconstitutional deprivation of liberty and property.

Covenants.

A covenant to repair a standing building, and construct an annex thereto which shall become an integral part of it, is held, in Krause v. Crothersville School Trustees (Ind.) 65 L. R. A. 111, to be discharged by the destruction by lightning of the main building when the work is practically completed, so as to render repair and completion of the annex impossible without the reconstruction of the main building.

Cy Près.

See CHARITIES.

Damages.

See also CONSTITUTIONAL LAW.

On who sues for breach, before the time of performance arrived, of a contract to employ him as manager of an opera house for a compensation, to consist in part of a share of the net profits, is held, in Greenwall Theatrical Circuit Co. v. Markowitz (Tex.) 65 L. R. A. 302, not to be entitled to recover as damages a share of the amount for which his employer disposed of the lease subsequent to the time when such employment should have begun.

Eight-Hour Law.

See CONSTITUTIONAL LAW.

Ejectment.

See INJUNCTION.

Evidence.

Perpendicular marks across the signature of a will, made, apparently, to cancel it, are held, in *Re* Hopkins (N. Y.) 65 L. R. A. 95, not to be writings, within the meaning of a statute permitting the comparison of writings by experts so as to admit opinion evidence of their origin.

Refusing to strike out the opinion of a witness as to the genuineness of signatures in evidence upon withdrawing other signatures which had been introduced for the purpose of comparison is held, in State v. Hall (S. D.) 65 L. R. A. 151, not to be error, where the witness had seen the person, who is alleged to have written the signatures, write, as to which he testifies, and is, therefore, competent to give his opinion as to their genuineness independently of any comparison with other signatures in evidence.

That a child is too young to be a competent witness because of inability to comprehend the obligation of an oath is held, in Kenney v. State (Tex. Crim. App.) 65 L. R. A. 316, not to preclude the admission in evidence of its declaration as part of the *res gestæ*.

Fixtures.

The main belt which transmits the power from an engine which is so affixed to the building as to be real estate, to the machinery in the mill, is held, in Giddings v. Freedley (C. C. App. 2d C.) 65 L. R. A. 327, to be, as between the owner and attaching creditors, real estate.

Handwriting.

See EVIDENCE.

Husband and Wife.

That a man may be guilty of larceny of property which the Constitution makes the

sole and separate property of his wife is decided in Hunt v. State (Ark.) 65 L. R. A. 71.

A pension received by a soldier of the Civil War from the Federal government is held, in Bailey v. Bailey (Vt.) 65 L. R. A. 332, to be properly taken into consideration as part of his resources, in fixing the future alimony to be paid by him, when his wife is granted a divorce, although, under the Federal statutes, it is not subject to seizure by any legal process until it has reached his possession.

Illegitimacy.

See CONFLICT OF LAWS.

Infants.

See EVIDENCE.

Injunction.

The jurisdiction of a court of equity to enjoin ticket brokers from disposing of, or attempting to transfer, tickets which they have purchased with notice from persons who agreed that they should not be transferred, is sustained in Schubach v. McDonald (Mo.) 65 L. R. A. 136.

Ejectment, and not a bill in equity for an injunction, is held, in Hicks v. American Nat. Gas Co. (Pa.) 65 L. R. A. 209, to be the appropriate remedy to oust from possession one who has entered upon premises under an oil and gas lease which is alleged to be invalid, and has erected necessary machinery, drilled a well, and is proceeding to drill others.

Innkeepers.

See MASTER AND SERVANT.

Insurance.

The holder of a purchase-money mortgage is held, in Hinton v. Mutual Reserve Fund Life Asso. (N. C.) 65 L. R. A. 161, to have no insurable interest in the life of the wife of the mortgagor, who did not join in the execution of the mortgage debt.

Breach of a condition in an insurance policy on a building and the furniture, fixtures, etc., and the stock of goods therein, requiring the insured to take an inventory of the stock at stated intervals, to keep a set of books, and preserve such inventory and books in a fireproof safe, and providing that the entire policy shall become null and void for failure to comply therewith, is held, in Miller v. Delaware Ins. Co. (Okla.) 65 L. R. A. 173, not to avoid the policy as to the insurance on the building and fixtures, where the building and its contents are described separately, and the insurance is apportioned between the building, the fixtures, and the merchandise, a certain amount being specified for each.

Intoxicating Liquors.

See CONSTITUTIONAL LAW.

Jury.

See CONSTITUTIONAL LAW.

Landlord and Tenant.

The owner of a building negligently destroyed by fire while in possession of the tenant is held, in Nashville C. & St. L. R. Co. v. Heikens (Tenn.) 65 L. R. A. 298, not to be able to recover from one responsible for the loss the whole value of it; but it is held that from such value must be deducted the value of the leasehold.

Larceny.

See HUSBAND AND WIFE.

Mandamus.

The right to a writ of mandamus to compel the removal from the records of a state prison of the photograph, description, and measurements of a person sentenced to death, but whose sentence is afterwards reversed, and who is subsequently acquitted

of the charge against him, is denied in *Re* Molineux (N. Y.) 65 L. R. A. 104.

Martial Law.

A private soldier who has been stationed to guard a residence, which, during a time of rioting and disorder, has been dynamited, and against which threats have been made to repeat the offense, with orders to shoot to kill any person found prowling about the house, is held, in Com. *ex rel.* Wadsworth *v.* Shortall (Pa.) 65 L. R. A. 193, to be guilty of no crime if he shoots a person who approaches the building and refuses to obey his command to halt.

Master and Servant.

An innkeeper is held, in Rahmel *v.* Lehndorff (Cal.) 65 L. R. A. 88, not to be liable, in the absence of negligence on his part, for injuries to a guest caused by an assault committed by a servant employed in the inn.

A hostler in charge of an engine running through a yard is held, in Louisville & N. R. Co. *v.* Lowe (Ky.) 65 L. R. A. 122, not to be a fellow servant of a car inspector at work therein, so as to relieve the company from liability for injuries inflicted by him upon the inspector by the negligent running of the engine.

Mines.

See MONOPOLIES.

Monopolies.

Where three coal mining companies operating in the same vein or seam in close proximity to one another, and just having commenced the development of that particular kind of coal, organize indirectly and nominally in the names of individuals a third corporation to act as their general sales agent, and each gives it by contract the exclusive right to sell its entire output of coal at prices uniform as to all three companies; and the agent company is to advertise and introduce the coal in the markets, establish and control all agencies and subagencies, and make all sales and collections, and deduct for its compensation 10 cents per ton out of the proceeds of sale, —it is held, in Slaughter *v.* Thacker Coal & Coke Co. (W. Va.) 65 L. R. A. 342, that the contract is illegal and void, as tending to suppress competition and restrain trade, contrary to public policy.

Municipal Corporations.

See also TAXES; WATERS.

A municipal corporation is held, in Wilson *v.* Mitchell (S. D.) 65 L. R. A. 158, not to be able to ratify the act of the superintendent of its waterworks system in entering upon private property and connecting a well there located with the city water mains without the consent of its owner, so as to become liable for the water taken from the well.

The creation by the legislature of a commission to erect public buildings for a municipal corporation is held, in Fox *v.* Philadelphia (Pa.) 65 L. R. A. 214, not to relieve the city from liability for injuries caused by the negligent operation of elevators in a building after it has been turned over to the city, where the commission is given no power to maintain, rebuild, repair, or refurnish the building after it has once parted with possession of it.

A municipal corporation is held, in Copland *v.* Seattle (Wash.) 65 L. R. A. 333, not to be liable for the death of one killed by the fall of material from a building in process of construction adjoining a street, by the mere fact that it granted a permit for the construction of the building, and took no precautions to warn passersby of danger in using the street pending the construction of the building.

Negligence.

See also CARRIERS.

A telephone lineman is held, in Whitworth *v.* Shreveport Belt R. Co. (La.) 65 L. R. A. 129, not to be guilty of negligence in going to the rescue of a fellow workman who, while on a telephone pole, received a shock caused by the wire he was handling coming in contact with the span wire of an electric street-car system, which, because of the defective insulation of the hanger by which it was connected with the trolley wire, was heavily charged with electricity, whereupon he fell headlong, and, his spurs catching on

a spike on the pole, hung suspended in the air; and the railroad company is held to be liable for the death of the lineman, where, in his effort to relieve his fellow worker, he seized the telephone wire, which had become charged with electricity through the negligence of the railroad company, and was instantly killed.

Pension.

See HUSBAND AND WIFE.

Railroads.

See also MASTER AND SERVANT.

A railroad company which permits the public to use its right of way to travel on foot at a particular place so continuously and frequently as to result in a well-beaten and clearly defined path, plain and open, is held, in Matthews *v.* Seaboard Air Line Railway (S. C.) 65 L. R. A. 286, to be bound to use ordinary care not to maintain pitfalls or unsafe conditions which may result in injury to one attempting to use the path, relying on the safety suggested by the implied invitation arising from visible conditions.

Sale.

The sale of the flour in quantity by the barrel, to one who intends to resell it under a representation that it is of a certain quality, without opportunity of inspection on the part of the purchaser, is held, in Bunch *v.* Weil (Ark.) 65 L. R. A. 80, to give him the right to rescind in case the flour proves to be of inferior quality.

A purchaser of machinery is held, in Computing Scales Co. *v.* Long (S. C.) 65 L. R. A. 294, to have no right to rescind the contract merely because the patents under which it is manufactured are in dispute.

Schools.

See TAXES.

Street Railways.

See also CONSTITUTIONAL LAW.

A street car company which removes from its tracks an obstruction wrongfully placed there by trespassers is held, in Howard *v.* Union R. Co. (R. I.) 65 L. R. A. 231, not to be bound to place it where it will not be dangerous to travelers upon the highway, nor to be liable for injury to a traveler in case it leaves the obstruction in the traveler's path after dark, unmarked by light, so that the traveler comes into contact with it to his injury.

Taxes.

An institution for the teaching of physical culture is held, in German Gymnastic Asso. *v.* Louisville (Ky.) 65 L. R. A. 120, to be within a constitutional provision exempting from taxation institutions of education.

The right of a city to invoke its taxing power to raise funds to construct a bridge which is not located upon a street or highway having a legal existence is denied in Manning *v.* Devils Lake (N. D.) 65 L. R. A. 187.

The legislature is held, in Nathan *v.* Spokane County (Wash.) 65 L. R. A. 336, to have no power to permit a person who, upon bringing a stock of goods into a state after the time for levying the taxes for a year has passed, pays the tax for the whole year, to deduct from the regular assessment against him at the beginning of the next year the amount representing the time when his property was not in the state.

Telephones.

See ACTIONS.

Ticket Brokers.

See INJUNCTION.

Trading Stamps.

A concern which sells trading stamps to merchants, to be given to customers as an inducement to secure their trade, and which redeems the stamps with articles kept in stock for that purpose, is held, in Winston *v.* Beeson (N. C.) 65 L. R. A. 167, not to conduct a gift enterprise within the meaning of a statute authorizing municipal corporations to impose taxes on such enterprises in the same manner as upon lotteries.

Waters.

A municipal corporation is held, in Johnson *v.* White (R. I.) 65 L. R. A. 250, to be liable for injuries to property upon which it casts surface water in a body across intervening land by means of a drain or culvert in a highway, although no more water is collected than would have naturally flowed upon the property in a diffused condition.

Wills.

See CHARITIES; EVIDENCE.

New Books.

"Handbook of the Law of Insurance." By William Reynolds Vance. St. Paul, Minn. West Publishing Company. 1904. 1 Vol. $3.75 delivered.

The author of this work is professor of law in the George Washington University, Washington, D. C. The work is elaborated from lecture notes of the author as experimentally developed through some years of teaching the law of insurance. The work does not attempt to cite all the multitude of cases on the subject, but undertakes to give a consistent statement of the logically developed principles that underlie all contracts of insurance. The leading cases on the subject, which have been selected in various case books on insurance law, are distinguished by capitals. Subsidiary chapters treat of rules peculiar to different kinds of insurance, with special attention to the construction of the standard fire policy. It is a compact treatise on a large subject, in a single volume.

"A Letter to the Sheriffs of Bristol." By Edmund Burke. Edited with introduction and notes by James Hugh Moffatt. Philadelphia and New York. Hinds, Noble, & Eldredge. 1904. 75 cents postpaid.

One of the noblest of English classics is here printed in an attractive form, with an elaborate introduction. The immediate reason for its publication in this form is to furnish it for the use of law students in Pennsylvania, who are required by the state board of law examiners to pass a satisfactory examination on the subject-matter and structure of several English classics, and on the lives of their authors. This is one of the classics named. To study this letter of the greatest of English political philosophers is a liberal education in the mastery of the language, in the spirit of freedom, in noble character, and in true statesmanship. It is an admirable addition to a law course.

"Index-Digest of the Florida Reports." 1 Vol. $10.

"Private International Law Cases and Notes." By John W. Dwyer. 2d ed. 1 Vol. $6.

"Outlines, Bailments, and Carriers." By Edwin C. Goddard. 1 Vol. $2.50.

"Cases on Bailments and Carriers." By Edwin C. Goddard. 1 Vol. $3.75.

"Topham's Company Law." 7 s. 6 d. (English.)

"Nicolas on Patents." 15 s. (English.)

"Wills on Principles of Circumstantial Evidence." With Cases. 5th ed. $5.

"American & English Railroad Cases, N. S." Vol. 34. $4.50.

"A Short Constitutional History of the United States." By Francis Newton Thorpe. $1.75.

"Manual of Commercial Law." By Herbert R. Spencer. $2.

"Elements of Commercial Law." By Herbert R. Spencer. $1.25.

"Law of Agency." By Clark & Skyles, 2 Vols. $12.

"Wellman's Art of Cross-Examination." 2d ed. $2.70 delivered.

"Suit in Equity in the Federal Courts." By William Stewart Simkins. $5.

"Commercial Law." By D. Curtis Gano and S. C. Williams. $1.

"Selected Cases on the Law of Property in Land." By W. A. Finch. 2d ed. $6.

"Public Corporations." By Henry H. Ingersoll. (A New Hornbook.) $3.75.

"Vance on Insurance." (A New Hornbook.) $3.75.

"The Negotiable Instruments Law." Annotated. (Kentucky.) By C. M. Lindsay. $2.

"Water Rights and Irrigation Laws of 1899, 1901, 1903." (Colorado.) By E. L. Rogers. Paper, 50 cts.

"Index of the Statutes, 1904." (Michigan.) By Albert Trask. $3.

"Fire Insurance Laws, Taxes, and Fees." 1 Vol. $5.

"Time and Notice in Practice." Wherein acts are required to be done in law, their limitations, and the rules of exposition; embracing actions and procedure. (Pa.) By Willis Reed Bierly. $4.50.

"The Law of Private Corporations." (Washington.) By J. F. Douglas. $3.

"Ohio Digest." Vol. 4. Being a Supplement to Vols. 1, 2, and 3 of Bates's Complete Ohio Digest, by Charles E. Everett. 1 Vol. $6.

"Digest of California Reports." New Supplement covering Vols. 101 to 142 inclusive. By R. M. Sims. 2 Vols. $15.

"Federal Statutes Annotated." By William M. McKinney and Peter Kemper, Jr. Vol. 3. $6.

"Wing & Wattawa's Annotations to the Wisconsin Supreme Court Reports." Second Supplement. Flexible morocco, $5. In sheets, $4.

Recent Articles in Law Journals and Reviews.

"Oral Testimony to Vary Written."—27 New Jersey Law Journal, 299.

"The Law of Bank Checks—Practical Series."—21 Banking Law Journal, 655.

"The Liability of a Manufacturer for Injuries to Third Persons Resulting from Improperly Constructed Article."—59 Central Law Journal, 324.

"Discretionary Trusts."—50 Central Law Journal, 301.

"Charging the Distributive Shares of an Intestate's Grandchildren with a Debt Owing to the Intestate by Their Parent Who Dies in the Lifetime of the Intestate."—59 Central Law Journal, 305.

"The Enforcement Abroad of Stockholders' or Directors' Liability (Continued)."—29 National Corporation Reporter, 241.

"Points on Inheritance Tax Procedure."—37 Chicago Legal News, 70.

"Should Jury Trials be Abolished?"—66 Albany Law Journal, 307.

"Genesis of the Federal Judiciary System."—19 Chicago Law Journal, 1269.

"Diversion of Highways."—68 Justice of the Peace, 470.

"Unpunished Commercial Crime."—12 American Lawyer, 379.

"Organized Wealth and the Judiciary."—12 American Lawyer, 383.

"The Divorce Evil."—12 American Lawyer, 389.

"The Delays in Criminal Procedure."—12 American Lawyer, 393.

"Is the Presumption of Innocence in Criminal Cases to be Weighed as Evidence in the Case."—59 Central Law Journal, 282.

"National Banks and the Trust-Company Problem."—19 Chicago Law Journal, 1254.

"Implied Warranty of Authority—A Study in Common-Law Development."—40 Canada Law Journal, 685.

"Title of Bona Fide Purchasers from Bailees."—59 Central Law Journal, 264.

"Private Property on the High Seas."—38 American Law Review, 641.

"The Venezuelan Arbitration Once More: Facts and Law."—38 American Law Review, 648.

"The Recent Russian Seizures and the Sinking of the 'Knight Commander.'"—38 American Law Review, 662.

"The Cy Près Doctrine, with Reference to the Rule against Perpetuities—An Advocation of Its Adoption in All Jurisdictions."—38 American Law Review, 683.

"Philosophical Classification of Law."—1 American Law School Review, 137.

"The Place of Law in the Studies of a University."—1 American Law School Review, 101.

The Humorous Side.

EXEMPTION OF FERRITMEN.—A Kansas attorney sends an item relating to the exemption of jurymen in a recent case in that state. The judge, after calling the jury into the box, referred to the statutes making exemptions and informed the jurymen that they were entitled to claim them, but were not obliged to do so. Then he proceeded to read a list of the exemptions as follows: "Ministers of the gospel, firemen, attorneys at law, Federal, state, or county officials, ferrymen,—" But, as he spoke the word "ferrymen" a tall, lank individual on a back seat arose and said: "Jedge, I claim my exemption." "Upon what ground?" asked the judge. "I'm a ferritman." "Where in thunder is there a ferry in this county?" asked the judge aside of one of the lawyers. The lawyer shook his head. "Where is your ferry?" asked the judge of the juror. "Ferry. Aint got none," replied the juror. "I'm a ferritman and I got a ferrit farm out here about six miles and about five hundred young ferrits, and it takes an experienced man to look after them." The claim for exemption was allowed.